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UNITED STATES DISTRICT COURT  
DISTRICT OF OREGON  
PORTLAND DIVISION

**UNITED STATES OF AMERICA,**  
Plaintiff,

v.

**THE CITY OF PORTLAND,**  
Defendant.

Civil Case No. 3:12-CV-02265-SI

**INTERVENER-DEFENDANT  
PORTLAND POLICE  
ASSOCIATION'S MEMORANDUM  
REGARDING FAIRNESS HEARING**

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This memorandum serves as Intervener-Defendant Portland Police Association's response to the Court's December 21, 2012, request for comment regarding the timing and mechanics of the anticipated fairness hearing in this matter. (Docket No. 18). As a general proposition, the Association agrees with the Court that a fairness hearing should include the opportunity for non-parties to provide oral and written comment regarding any proposed settlement agreement between the parties. In particular, the fairness hearing should not be a trial to resolve factual disputes, but should be a forum for public comment on the fairness, adequacy, and reasonableness of the parties' agreement.

As to timing, the fairness hearing should occur no sooner than thirty days from the final resolution of any disputes between the parties to the litigation. Thus, if the court grants intervener status to the Association and/or the Albina Ministerial Alliance Coalition for Justice and Police Reform, the Court should first resolve any factual and legal disputes between the parties at the merits stage of the litigation. Also, the Court should allow the parties to revise the proposed settlement agreement at the remedial stage. Then, after these two steps have been completed, the Court should hold a fairness hearing.

That is, the public should be presented with the opportunity to comment on any proposed settlement agreement only after all parties to the litigation, including the Association, have first agreed to the terms of the agreement. To do otherwise would presuppose that the agreement is fair, adequate, and reasonable as to the Association's legally protectable interests. Further, holding a fairness hearing too soon may require the Court to hold a second fairness hearing should the interveners later seek and obtain amendments to the current version of the proposed settlement agreement.

As set forth in its motion to intervene, the rights of the Association and its members cannot be adequately protected absent the Association's intervention as a party to the litigation. (Docket No. 7). Nevertheless, if the court denies intervener status to the moving parties, then they should be allowed to submit both oral and written comments regarding the agreement.

As to mechanics, the Court may wish to look to the parties and the local media to publicize the fairness hearing to ensure maximum public participation. Though not a requirement to participate in the fairness hearing, any person or entity may submit written comment to the Court at least ten days prior to the hearing. During the fairness hearing, each participant shall be allotted time for oral comment, not to exceed ten minutes. Further, the Court should establish

rules for decorum during the fairness hearing.

In sum, though a fairness hearing is appropriate in this matter, care should be taken to ensure that the hearing is held only after all parties, including the Association, agree to the terms of any proposed settlement agreement.

DATED this 22nd day of January, 2013.

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By: /s/ Anil S. Karia

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CERTIFICATE OF SERVICE

I hereby certify that I served the foregoing INTERVENER-DEFENDANT PORTLAND POLICE ASSOCIATION'S MEMORANDUM REGARDING FAIRNESS HEARING on:

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by service electronically under LR 100.7.

DATED this 22nd day of January, 2013.

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